



**DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING
ENFORCEMENT DIVISION
*DIRECTIVE***

**DIRECTIVE
NUMBER
313**

**DISTRIBUTION
DATE
October 1, 1998**

1. **SUBJECT: CASES NOT COMPLETED WITHIN THE STATUTORY TIME LIMIT**
2. **PURPOSE:** To set forth the procedures for closing employment cases not completed prior to the expiration of the one year statutory limit.
3. **BACKGROUND:** The Department of Fair Employment and Housing (DFEH) endeavors to complete the investigation of cases within statutory timeframes. There may be occasions, however, where a case cannot be completed within one year of the filing date. The procedures to be used in processing such cases are provided below.
4. **PROCEDURES:**

When, because of an extenuating circumstance a case has not been completed in the one year statutory time limit, the investigation can continue beyond that time.

A. Cases Where the Investigation Is Not Completed Within the Statutory Time Frame:

- 1) The investigation of a case may continue after one year. However, an investigation will **NOT** continue beyond the one year when a determination has been made that, based on the complexity of the case, the time needed to complete it, and the unlikelihood of a final determination in the complainant's favor, it appears that pursuing the investigation would be an inefficient use of Department resources.
- 2) Where a decision has been made not to complete the investigation, the case may be closed with Closing Category 13: "No Determination Possible Within One Year," but only with the approval of the Regional Administrator.
- 3) When the District Administrator believes that it is appropriate to close a case with this category, the following is to be forwarded to the Regional Administrator prior to the one year anniversary date:
 - a) A memorandum requesting authorization to close the case with Closing Category 13 and an explanation of why the investigation

was not completed within the statutory timeframe and why it should not be continued; and

- b) A copy of the Consultant's investigative report written in accordance with the case analysis format. The report should identify, under each relevant question, those areas requiring further investigation.
- 4) The Regional Administrator will approve or deny the request and advise the District Administrator of his/her decision in writing.

B. Completing the Investigation After the Expiration Date:

1) Non-Meritorious Cases:

Upon completing the investigation of a case that is found to be non-meritorious, the case will be closed using Closing Category 20, "No Probable Cause To Prove A Violation of the Statute."

2) Meritorious Cases:

Upon completing the investigation of a case that is found to be meritorious, the following procedures will apply:

- a) The assigned Consultant will prepare a Progress Memo and refer the case to the District Administrator who will schedule it for a conciliation conference. The District Administrator will send a letter to the respondent, advising of the Department's position (refer to Attachment 1 sample letter). The case **will not** be forwarded to the Legal Division.
- b) If the respondent is not willing to participate in the conciliation conference or is unwilling to resolve the matter, the case will be closed with Closing Category 18: "Unsuccessful Conciliation." The assigned Consultant will so notify the complainant using a pre-closure letter.

NOTE: The fact that a thirty (30) day pre-closure letter will not be sent in this instance is an ***exception*** to the normal procedure for closing a case with Closing Category 18. In all other circumstances, normal procedures for closing cases will apply (refer to Directive 500, "Closing Categories and Procedures").

3) Dual Filed Cases:

- a) Dual filed cases closed with Closing Categories 13 and 18 may be waived to the U.S. Equal Employment Opportunity Commission (EEOC) for continued processing with the approval of the Regional Administrator. The District Administrator will contact the EEOC State and Local Coordinator to request that EEOC accept the waiver. The District Administrator will note this decision in the Case Diary.
- b) When the case is waived to EEOC, it will be accompanied by a memorandum which includes:
 - a copy of the charge;
 - a copy of the Progress Report; and
 - a summary of conciliation efforts, including copies of all pertinent correspondence.

5. **APPROVAL:**

Nancy C. Gutierrez, Director

Date

SAMPLE LETTER FOR RESPONDENT

RE: (Case Name and Number)

The Department has completed the investigation of the above referenced charge. The information gathered appears to indicate a violation of the Fair Employment and Housing Act. You should be aware that the complainant is entitled to file a private lawsuit. The State's records will be made available to the complainant in support of the case.

The Department of Fair Employment and Housing has an obligation to facilitate the voluntary resolution of this matter to prevent it from escalating further. It is therefore requested that you, or a company representative authorized to make a final decision on the case, contact me for the purpose of scheduling a conference to explore the possibility of resolving this matter.

Please contact me at (telephone number) to arrange a mutually agreeable date for our meeting.

Sincerely,

District Administrator

IF THE CASE IS DUAL FILED WITH EEOC, ADD THE FOLLOWING PARAGRAPH PRIOR TO THE CLOSING STATEMENT:

This case is also filed with the U.S. Equal Employment Opportunity Commission (EEOC). A settlement agreement with the Department will also resolve that charge. If we are unable to resolve this matter, the Department will have no other alternative but to request that the EEOC pursue the matter further.